

REMARKS

Claims 3-20, 36 and 38 are pending in the application. No claims have been amended. Claim 38 is new. No new matter has been introduced. In view of the foregoing amendments and the following remarks, Applicants respectfully request allowance of the application.

PRIOR ART REJECTIONS

Claims 3-20 and 36 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Pat. No. 5,717,989 to Tozzoli. Applicants note that Tozzoli and the present application are commonly assigned to TradeCard, Inc.

Claims 3-20 and 36 Define over Tozzoli

Independent claim 3 recites, *inter alia*:

means for electronically providing **an opportunity for the seller to obtain financing** in relation to the one or more goods or services

Tozzoli fails to teach or suggest at least this feature of independent claim 3.

Tozzoli is directed to an electronic trading system. The present application is also directed to an electronic trading system. However, in contrast to Tozzoli, the present invention is directed to a more sophisticated, comprehensive and fully integrated electronic trading system that includes a number of improvements and enhancements that have not been previously taught or disclosed in any prior art system (e.g., the electronic trading system of Tozzoli). One improvement provided by the present invention is “electronically providing an opportunity for the seller to obtain financing in relation to the one or more goods or services” that are the focus of a transaction, as recited in claim 3. Providing an opportunity for the seller to obtain financing improves the efficiency and lowers the costs of conducting transactions in a manner not contemplated by any prior art trading systems.

As described in paragraph 122 of the present published application, providing an opportunity for a seller to obtain financing can increase the likelihood that a seller can enter into and subsequently satisfy a purchase order agreement:

Allowing sellers to obtain financing can allow a seller to satisfy a purchase order agreement, or to enter into a purchase order agreement, which the seller might otherwise be unable to do. **For example, a seller may not have the funds to purchase parts**

required to produce the goods, yet the seller knows that, through the purchase order agreement, the seller will be entitled to payment from the buyer which will cover the costs of the seller's production and allow acceptable profit. Despite this, the buyer may be unwilling to provide payment until the buyer receives the goods. **In this situation, the transaction might not happen unless the seller is able to obtain financing.** Thus providing an opportunity for the seller to obtain financing is a useful feature to include as part of a trading system. (Emphasis added)

Paragraphs 123-126 describe further advantages realized by the present invention by providing an opportunity for the seller to obtain financing – in particular, the mechanisms by which the financing can be sought as well as the flexible ways in which the financing can be structured.

Tozzoli fails to teach or disclose a trading system that incorporates functionality to provide a seller an opportunity to seek and obtain financing. More specifically, Tozzoli fails to teach or suggest “means for electronically providing an opportunity for the seller to obtain financing in relation to the one or more goods or services” as recited in claim 3. This is unsurprising as Tozzoli is entirely silent as to any desire to provide financing to a seller.

The Office Action at page 2 alleges that the discussion of Letters of Credit at col. 1, lines 24-35 of Tozzoli discloses the above-highlighted feature of claim 3. Applicants respectfully disagree. Financing a party to a transaction is financial arrangement that is separate and distinct from the issuance of a Letter of Credit. A Letter of Credit is essentially a promise to pay using available funds – issuing or receiving a Letter of Credit is not “financing” (e.g., a loan) as that term is commonly understood and used in claim 3. A Letter of Credit is often used by a buyer when the buyer is remote or unknown to a seller. Because the buyer is remote and/or unknown, the seller may lack confidence in the buyer's own promise to pay when goods prepared by the seller are shipped to the buyer. If the seller's confidence in the buyer is too low, then the transaction will not occur, as the seller will forgo any potential profit in view of the perceived risk that the seller will not be properly compensated. To remedy this situation, a Letter of Credit can be issued in favor of the seller by the seller's bank, at the request of the buyer or buyer's bank. Because the seller's bank promises to pay the seller, and because the seller's own bank is perceived to be less risky than the buyer, the seller is more likely to enter the transaction.

In no way can a Letter of Credit be construed to as financing provided to a party – e.g., as a loan to a party to a transaction. A Letter of Credit is clearly a promise to pay for services rendered/goods produced. The issuance of a Letter of Credit does not result in a party receiving funds the party otherwise would not have in exchange for collateral, for example, and

does not result in the party owing a debt to a lender in a way a “financing” transaction does. Therefore, it is clear that the section of Tozzoli cited by the Office Action (as well as all other sections of Tozzoli) fails to teach or disclose the financing of a seller. Further, as Tozzoli is silent as to the possibility of financing of a seller, Tozzoli is necessarily silent as to any means for electronically providing an opportunity for a seller to seek and obtain financing. Therefore, Applicants believe the rejection of claim 3 should be reconsidered and withdrawn as Tozzoli fails to teach or suggest “means for electronically providing an opportunity for the seller to obtain financing in relation to the one or more goods or services” as recited in claim 3.

Claims 4-20 depend from independent claim 3 and are allowable for at least the reasons applicable to claim 3, as well as due to the features recited therein.

Independent claim 36 recites features similar to claim 3 and is therefore allowable for at least the same reasons as discussed above in relation to claim 3.

New claim 38 provides additional details on the mechanisms by which financing for a seller can be sought, the information a lender can use in determining whether to provide financing or not, as well as the flexible ways in which the financing can be structured. None of these features are taught or disclosed by Tozzoli.

REQUEST FOR INTERVIEW

Prior to issuance of a subsequent Office Action in the present application, Applicants request a telephone interview be conducted between Applicants' representative Wesley Jones and the Examiner assigned to this application in order to advance prosecution. Applicants respectfully request the Examiner to contact Applicants' undersigned representative at the number provided below to arrange the interview based on the Examiner's availability and prior to the Examiner taking further action in this application.

CONCLUSION

In view of the above amendments and arguments, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at (202) 220-4430.

The Commissioner is authorized to charge any fees or credit any overpayments which may be incurred in connection with this paper under 37 C.F.R. §§ 1.16 or 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

Date: January 3, 2008

/Wesley W. Jones/

Wesley W. Jones

Registration No. 56,552

KENYON & KENYON, LLP
1500 K Street, N.W.
Washington, D.C. 20005
Ph.: (202) 220-4200
Fax.: (202) 220-4201